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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/749,499

12/29/2003

Richard C. Gunderson

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28075

7590

03/04/2009

CROMPTON, SEAGER & TUFTE, LLC

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SUITE 800

MINNEAPOLIS, MN 55403-2420

EXAMINER

STIGELL, THEODORE J

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

03/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/749,499	Applicant(s) GUNDERSON, RICHARD C.	
	Examiner THEODORE J. STIGELL	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17-19 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-15 and 23-26 is/are allowed.
- 6) ☒ Claim(s) 17-19 and 26 is/are rejected.
- 7) ☒ Claim(s) 8 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/6/2009 has been entered.

Claim Objections

Claims 8 and 11 are objected to because of the following informalities: There is no antecedent basis for "the holes" in claim 8. Please insert a comma between "band" and "completely" on line 8 of claim 11 to fix the grammatical error. Appropriate correction is required.

Claim Rejections - 35 USC § 102

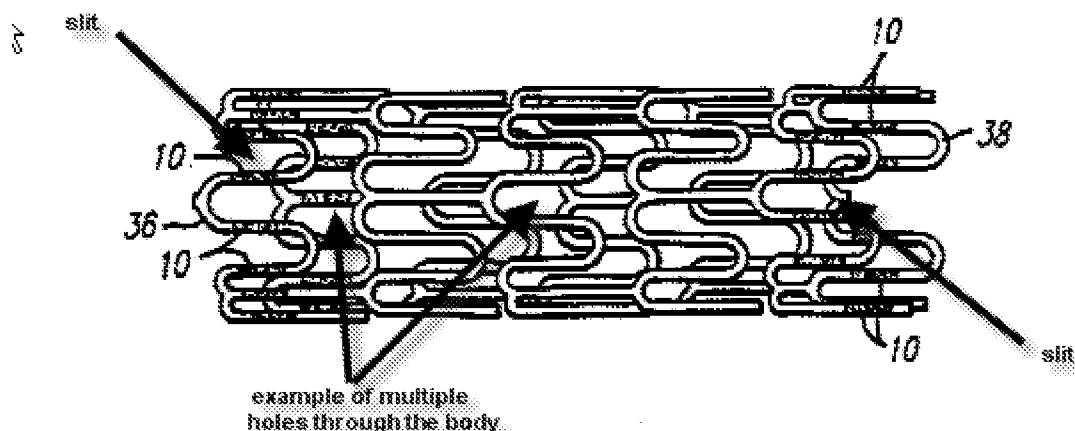
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

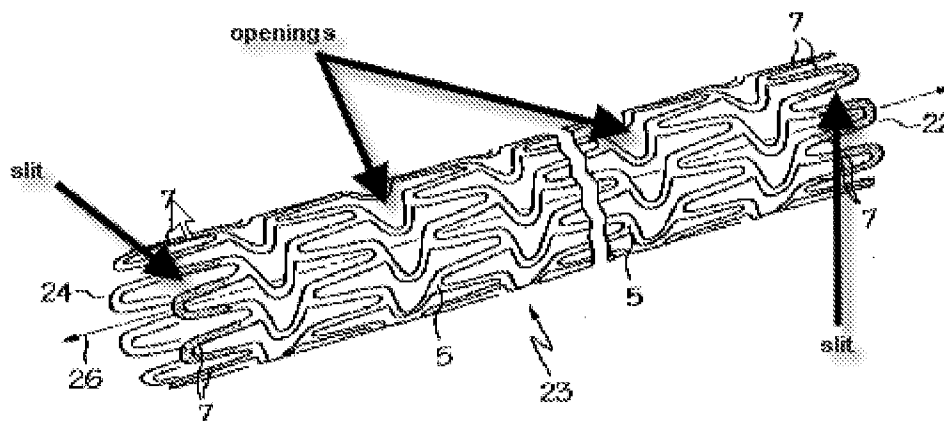
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 17, 19, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Lam et al. (5,725,572). Lam discloses a radiopaque marker band (10, a radiopaque stent can be considered a radiopaque marker band) adapted for being secured to an intravascular medical device (ex., balloon catheter), comprising a generally cylindrical body section having a first end surface, a second end surface and an annular wall extending from the first end surface to the second end surface, the body section having a first hole and a second hole defined therein, wherein the first hole and the second hole are axially aligned on opposing sides of body section; and wherein the body section includes one or more longitudinal slits, the one or more slits extending from the first end surface of the generally cylindrical body toward the second end surface of the generally cylindrical body and one or more slits extending from the second surface wherein the slits are offset to each other. The examiner has provided a copy of Figure 5 of Lam to illustrate the limitations.



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Claims 17, 18, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by DiCaprio (US 2003/0121148). DiCaprio discloses a radiopaque marker band (23, a radiopaque stent can be considered a radiopaque marker band) adapted for being secured to an intravascular medical device (ex., balloon catheter), comprising a generally cylindrical body section having a first end surface, a second end surface and an annular wall extending from the first end surface to the second end surface, the body section having a first hole and a second hole defined therein, wherein the first hole and the second hole are axially aligned on opposing sides of body section; and wherein the body section includes one or more longitudinal slits, the one or more slits extending from the first end surface of the generally cylindrical body toward the second end surface of the generally cylindrical body and one or more slits extending from the second surface wherein the slits are aligned with each other. The examiner has provided a copy of Figure 13 of DiCaprio to illustrate the limitations.



Allowable Subject Matter

Claims 1-15 and 23-25 are allowed.

Response to Arguments

Applicant's arguments with respect to claims 17-19 and 26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THEODORE J. STIGELL whose telephone number is (571)272-8759. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Theodore J Stigell/

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Examiner, Art Unit 3763

/Nicholas D Lucchesi/

Supervisory Patent Examiner, Art Unit 3763